

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AZIZ SHADID,

Petitioner,

v.

JEROME NICOLATO,

Respondent.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: _____

ORDER

13 Civ. 5800 (PGG) (JCF)

PAUL G. GARDEPHE, U.S.D.J.:

On July 23, 2014, the Honorable James C. Francis, United States Magistrate Judge, issued a Report and Recommendation (“R & R”) recommending the denial of pro se Petitioner Aziz Shadid’s 28 U.S.C. § 2254 Petition. (R & R (Dkt. No 26)) In his R & R, Magistrate Judge Francis informed Petitioner that he had fourteen days from service of the R & R to file any objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. (Id. at 10)

Petitioner has not filed any objection to the R & R. Accordingly, he has waived his right to review by this Court. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); see also Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”); Spence v. Superintendent, Great Meadow Corr. Facility, 219 F.3d 162, 174 (2d Cir. 2000) (“Failure to timely object to a report generally waives any further judicial review of the findings contained in the report.”).

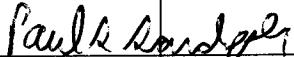
This Court has nonetheless reviewed Judge Francis’s comprehensive and well-reasoned R & R and is satisfied that “there is no clear error on the face of the record.” Nelson v.

Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). As Judge Francis explains in his R & R, Shadid's Petition is time-barred under the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d)(1), and Shadid has not demonstrated that he is entitled to equitable tolling. (R & R (Dkt. No. 26) at 4-10)

Accordingly, this Court hereby adopts Magistrate Judge Francis's R & R in its entirety, and, for the reasons stated therein, denies Shadid's Petition with prejudice. Because Petitioner has not at this time made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue under 28 U.S.C. § 2253. This Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue). The Clerk of the Court is directed to close this case and terminate any outstanding motions.

Dated: New York, New York
September 17, 2014

SO ORDERED.



Paul G. Gardephe

United States District Judge